

**LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD**

Meeting of April 26, 2012

Members in Attendance

Richard Freeburn, Chairman
Gregory Sirb, Vice Chairperson
Sara Jane Cate
David Dowling
Watson Fisher, Alt.

Also in Attendance

James Turner, Solicitor
Dianne Moran, Planning & Zoning Officer

**Special Exception via
Docket # SE-12-01**

Applicant: Beth Budesheim

Property: 1161 Fairmont Drive

Interpretation: A counseling business in a home is a major home occupation and is only permitted by special exception in the R-1 District.
Applicant desires to operate a counseling practice as a major home occupation at the property.

Grounds: Section 306.B.1, of the Lower Paxton Township Zoning Ordinance pertains to this application.

Property Posted: April 17, 2012

Advertisement: Appeared in The Paxton Herald on April 11 & 18, 2012

The hearing began at 7:00 pm.

Mr. Freeburn stated it is customary for the Board to enter as exhibits the application and site plans. The applicants had no objection to its doing so.

The following were sworn in: Beth Budesheim, 2020 Holly Street, Harrisburg, PA 17104, applicant; Michael Carew, 1905 Woodland Street, applicant's real estate agent; and Dianne Moran, Planning & Zoning Officer. The applicant was represented by Attorney Michael Pykosh 2132 Market Street, Camp Hill PA 17011.

Mr. Pykosh offered the following exhibits: Applicant's Exhibit #1: Agreement of sale for 1161 Fairmont Drive dated April 3, 2012; Applicant's Exhibit #2 Ms. Budesheim's resume; Applicant's Exhibit #3, professional license from the State of Pennsylvania dated 2002. Ms. Budesheim stated she is a licensed professional counselor,

currently practicing for the last 17 years. She has a Masters Degree from Miller State University where she has received 39 credits in addition to the 30 in a doctoral program. To be licensed professional counselor in the State of Pennsylvania, you must have 60 credits. She stated her license is in good standing.

Ms. Budesheim testified that about 90% of her caseload is individuals. The other 10% is occasional marriage counseling and rarely families. Most clients are females, some clients are teenagers. The letter included with Ms Budesheim's application to the Zoning Hearing Board is marked as Applicant's Exhibit #4, and summarizes what she wants to do in general. She provided a summary of issues for which she sees clients, this is marked as Applicant's Exhibit #5. She stated that she sees people with anxiety disorders, depression, relationship issues including divorce, grief and loss issues, attention deficit disorders, and spiritual concerns. Ms. Budesheim testified that she has no clients which are referred to her from the justice system or criminal or prison system. She has no dealings with or has no clients with criminal issues or criminal issues dealing with children. If she had a client and discovered that type of history, she would refer them to an organization that specializes in that type of care.

Ms. Budesheim testified that she is the only person who would work in the home. She will have no employees. The home occupation will be contained solely within the residence and there will be no outward signs of a home occupation including signs or external displays.

Applicant's Exhibit #6 shows the square footage of the home from the appraisal report. Ms. Budesheim stated she has been inside the home she intends to purchase. The upper part of the home has 1,785 square feet and the basement is finished with a walk out. The area to be used for the business is 13 feet by 30 feet, and is 22% of the home's square footage.

Ms. Budesheim stated that a standard appointment is 50 minutes long leaving 10 minutes between clients. This leaves enough time for one client to go and the next to arrive. Occasionally there may be overlaps as they come and go, but there will be three parking spaces. The only time there would be two vehicles for an appointment is if a couple was scheduled together and they drove separately. That scenario may happen twice a week.

The hours of operation will be from Noon to 8:00 or 9:00 pm. This works best to allow flexibility for clients that work during the day. She noted that the ordinance allows work to go on between the hours of 7:30 am and 9:00 pm, and she will definitely be between those times.

Ms. Budesheim described the driveway as a double wide driveway with no garage. It can easily fit four cars. She noted it would need a turnaround space so people do not have to back out of the driveway onto the road. She is the only person that will reside in the home. Applicant's Exhibit #8 is a drawing of where the additional driveway

space might be able to be located. The purpose of the turnaround is so cars can exit forward safely. There will be no delivery via tractor trailers, no deliveries or large equipment, no hazardous, flammable, explosive or medical toxins, and she will not tutor or do instruction. The counseling business will be the only business taking place in this location. She is not a doctor, chiropractor or dentist. The home occupation will not involve manufacturing or selling of goods, or repair of vehicles. There will be no retail sales. The home occupation will not create any type of nuisance noise.

Mr. Sirb asked if Ms. Budesheim has a home office or an office currently. She answered that she practices out of an office in Hummelstown on South Meadow Lane off of Route 39. Mr. Sirb asked the reason to go from an office to a home office. Ms. Budesheim answered that it is because of location, and to have larger space. Mr. Sirb asked for the reason to not have an office closer to or in town. She answered that they did look for something but she is not finding anything suitable, and the expense is an issue.

Mr. Freeburn asked if there will be employees. Ms. Budesheim answered there will be no employees. Mr. Freeburn asked about her employer. Ms. Budesheim is self employed. He asked about the current office situation. Ms. Budesheim shares an office with another therapist. Mr. Freeburn asked if another person helps her with paperwork or billing. She does those things herself and there is no other person.

Mr. Freeburn asked about accessing the office. Ms. Budesheim stated that the house is a square ranch house and the carport is enclosed. The carport is now a separate family room/den and it has a separate entrance from the front and the back. There are lots of windows and the parking is in front of the door a client would use to get into the office. There is a separate door for the home. The home and office have very clear demarcations. She may not ethically have clients in her home space.

Mr. Fisher pointed out that if there were three cars parked, they couldn't access the turnaround area as it is shown. He suggested it be located closer to the street.

Mr. Pykosh stated that the Planning Commission recommended that a turnaround be added for safety, and she would like to do that. The exact location and dimensions can be whatever is necessary. Mr. Freeburn stated that a typical parking space is 9x17.

Mr. Dowling stated he was not very concerned with the specifications of the parking, he was most concerned with why a business should be allowed in a home in the R-1 District. He has not heard any good reasons. There are many fine counselors in office space. He has not voted in favor of any home occupation with clients coming to the home. He sees it as an issue of allowing the intrusion of a business into the R-1 District.

Mr. Freeburn asked about the specific requirements of a special exception. Mr. Pykosh stated that they outlined each requirement in the testimony, and she can address and meet each one.

Mr. Pykosh referenced a point in the ordinance that says the Zoning Hearing Board can deny or limit the intensity through conditions if it determines that it is too intense for the proposed location. He stated this is no more intense than a barber shop or another type of home occupation. He noted she is taking steps to limit the traffic danger. He noted that working from home is getting more common.

Mr. Turner stated that a special exception is the opposite of a variance. A variance needs to show a hardship or uniqueness to justify the variance, where a special exception applicant must show they can meet the criteria listed in the ordinance. A "permitted by special exception" use is not quite a permitted use, but it is very close. Mr. Pykosh stated that case law shows that if the applicant can meet the requirements, it is the burden of the objector to show in regards to the health safety or welfare that it would adversely affect the neighborhood. He stated they have met all of the factors.

Mr. Freeburn called for testimony from the audience.

Mr. Oliver Slinker, 1185 Fairmont Drive, two doors down from the subject home, was sworn in. He stated that he has lived in his home for 57 years and remembers when this house was built. He and the family were close friends. He asked if the turnaround will be in the front of the house or to the west side. Mr. Freeburn offered the drawing for Mr. Slinker to view.

Dolores Slinker, same address, was sworn in, and also viewed the drawing.

Mr. Slinker asked how a vehicle will back in. Mr. Freeburn stated that is a question the Board has as well, and suggested the pad may need to be bigger than shown on the drawing. Mr. Freeburn stated that whatever is built will have to conform to the ordinances. Mr. Slinker asked Ms. Budesheim for the clinical definition of depression, since she will see clients with depression. Ms. Budesheim asked if he wanted her to name the nine symptoms a counselor looks for. Mr. Slinker answered yes, what is one of the nine symptoms. Ms. Budesheim stated they look to see if they are...Mr. Slinker stated "No". Ms. Budesheim asked Mr. Slinker to tell her what he is looking for. Mr. Slinker stated a person suffering depression shows what; anger. Ms. Budesheim agreed. Mr. Slinker stated he doesn't think the neighbors want angry people there. He was told anger is a symptom by a person on Locust Lane. He also noted that he does not know how a vehicle can turn into that spot.

Yvonne Pritchard, 1175 Fairmont Drive, next door to the home for sale, on the side where the turnaround will be located, was sworn in. She noted she can't see that fitting there since her property goes beyond the utility pole, there isn't that big an area. She has been there for 35 years, and is concerned that the area is residential. The area

between Locust Lane and Devonshire Road has become very busy lately. There is a bus stop at Fairmont and Timothy Road, on the left side of the house and there are several stops a day. She also noted she has small grandchildren and they are at her home a lot. She is concerned that depression is anger, and couples get angry and she is worried about the environment in the area. She understands that everybody wants to work from home, but not everybody has to work from home. A counseling service in a quiet nice residential area...

Rick Pritchard, same address, was sworn in. He noted he was talking to a lot of his neighbors, and gathered 30 signatures.

Mr. Sirb asked if this business would change the characteristic of the neighborhood. Mr. Pritchard stated that he thinks so. Mr. Slinker asked if Mr. Sirb has gone across Fairmont Drive. Mr. Sirb answered yes. Mr. Slinker stated it is like a race track after school. Mr. Slinker stated he has a double wide driveway and a small car so he can turn around and face out to exit the driveway. Mr. Sirb asked if he thought this business would add to the already busy traffic. Mr. Pritchard answered yes. Mr. Slinker stated he didn't know if it would really add to it, but it would be difficult for these people who are not familiar with the area.

Mr. Freeburn asked if this were some other type of occupation instead of a counseling service, such as cutting hair with 4-5 people a day, one at a time on appointment. Ms. Pritchard stated that would be a concern; it wouldn't matter if it were a hair salon, or manicure place or any business in their quiet residential area. There are kids playing and there are large yards-almost an acre. The kids accumulate and play, and it is a quiet neighborhood and they do not need a business there of any kind. Mr. Pritchard asked for a guarantee that the applicant won't have anyone that is a risk or criminal, or dangerous. There are small children, widows and single women in the neighborhood, and they just don't need this. They don't need the extra risk to their security.

Ms. Slinker stated that Lower Paxton is a huge area, and there has to be a place where she could find some office space that is closer to her people that work downtown. She asked why she would come into a residential area where it is quiet and there are so many kids. Plus there are bus stops at several corners. Why there.

Mr. Turner explained that the Township ordinance allows ...Ms. Slinker stated she pays her taxes. Mr. Turner offered to answer her question. He stated that the ordinance allows people to ask for a special exception to have a home occupation. It is allowed because the ordinance allows it, the applicant is not seeking to do something that is not allowed. She has to meet certain conditions, which they are attempting to demonstrate. He noted that Ms. Slinker was challenging some of that, but it is...Mr. Slinker stated that they are going to challenge it. Mr. Turner asked him to not talk over him so the stenographer can get what is being said. It is something that is in the ordinance.

Steven Lundt, 1192 Fairmont Drive was sworn in. He stated that the applicant hasn't proven a need for special exception. It just appears that she wants it so she can make some money. That is fine, and she has a place not far away, as well as the Cornerstone Counseling. He stated he believes she practices there. That location is a mile away. He does not see any reason to bring this to a residential area. The area has been residential for 50 years. He stated that if there are 4-6 people a day for 4-5 days a week, there is at least 30 people coming. If she is seeing kids, the parent will drop the kids off. There may be someone sitting around besides the patient. He explained that his family has established themselves in the neighborhood for 15 years on the belief and basis that this is a residential neighborhood and that is the way it will always stay. He has invested in his home like others, and he wants a place for his kids to grow up that he feels is safe and secure. He does not believe that bringing in this business is conducive to that. He noted that what she says and what will happen in two years can be different, it could turn out to be a group home. If she has a residence at Holly Street, why is she buying another home, she can't live in two places. She has multiple places of business, and he doesn't think she needs any more. This application is only for business, for money. He doesn't see that she has proven a need for anything in this case.

Mr. Freeburn asked if the applicant intends to live at this location. Ms. Budesheim answered yes, it will be her sole residence.

Ray Griffith, 5998 Timothy Road was sworn in. He lives diagonal across from the home. Regarding parking, if there is one car for the owner, a husband and a wife, that is three plus the next appointment is four cars. What happens if she gets married, then there will be two cars.

Linda Lucas-Hunt was sworn in. She stated she sort of read the letter submitted with the application and is basing her comments on that. She is asking that it doesn't go through since it is a residential R-1 status, and it is for single homes. She has a major concern that the bus stop is across from the house, kids are dropped off on Timothy and Clover. In the evenings, she wants to spend time with her children and not have to worry about who is coming and going and looking at the area as a business. A business is a financial gain that she is trying to obtain in an R-1 District. She stated that after doing some research on the applicant, she has two counseling offices: Cornerstone and Hummelstown. There are multiple areas that are zoned for business that she can go. It does not matter to Ms. Lucas-Hunt that it is counseling, or another business, it is still a business in a residential single family home. She does not think it is appropriate. Approving a special guidance will open pandora's box for anybody who may want a business in their home and before you know it, it isn't residential anymore, it becomes a business. It is not appropriate. It is not a legitimate reason to purchase a home to have a business for financial gains in a single family home.

Mr. Slinker asked if the whole area is opened up if this is approved. Mr. Freeburn stated the only application made has been for this property. This is not a request to

change the zoning. The zoning of this area is R-1, in which a home occupation is permitted by a special exception. Anyone in the R-1 District may have a home occupation by special exception. If they satisfy the legal requirements of the ordinance, then it is permitted. There is no request to change the zoning of the area or change the way things are zoned right now. Simply that in this zone, as it exists, a home occupation business is permitted by special exception if they satisfy the requirements, and if the Board is following the law, then it should be granted.

Mr. Sirb asked Ms. Moran to explain the difference between a minor home occupation and a major home occupation. Ms. Moran stated that a minor home occupation has no employees, no customers, no advertising. Mr. Sirb asked if that would come before the Zoning Hearing Board. Ms. Moran stated that is permitted by right, the neighbors would not even know it is there. Mr. Sirb stated that is what is permitted in the R-1 District. Mr. Sirb stated that this application is a major home occupation, not a minor home occupation. There is an extra step. There is a big difference between the two. Mr. Freeburn stated if they satisfy the requirements of the special exception then it is permitted.

Ms. Slinker stated this area is a family oriented area. She stated it breaks her heart to let this go through, as if nobody cares. She asked if Mr. Freeburn lived in a nice area would he want a business moving in on him. Mr. Freeburn stated...Ms. Slinker stated no-he wouldn't. Mr. Freeburn stated that if it is an R-1 District, he would have to follow the law. Ms. Slinker stated they would find a way out. Ms. Pritchard stated this is a major exception, not a minor one, and it is major.

Mr. Freeburn asked if anyone has any other...Ms. Pritchard stated they submitted 30 signatures, and maybe she should have asked those 30 people to show up.

Mr. Dowling stated the Board understands their position. Mr. Freeburn stated that the decision has not been made, and asked for comments or information that the Board has not heard yet.

Mr. Slinker asked if the Board is bound to grant the special exception if they satisfy the conditions. Mr. Turner stated he understands that the courts have interpreted that if a special exception can meet the conditions then they are entitled to it.

Mr. Sirb stated that is his concern, he doesn't think they have met the conditions. He added that he thinks it is a bad spot and the bus stop is in a bad spot and the driveway is a disaster.

Mr. Turner asked if the applicant's attorney had anything to add.

Mr. Pykosh stated that there is a concern about the people that will be coming to the home, and asked if Ms. Budesheim, as a single women, the only person in the house, if she wants someone in her home that may be considered dangerous. Ms. Budesheim

answered absolutely not. Mr. Pykosh asked if Ms. Budesheim is single, but if she were married and had a child that was of driving age, would there be any more cars in the driveway than what is proposed with the clients. Ms. Budesheim stated it would be the same. Mr. Pykosh asked about the property, if the land is flat and without sensitive areas such as wetlands or wooded areas. She stated that is correct. Mr. Pykosh asked if Ms. Budesheim would abide by the Codes Officer if they said it should be in a different location. Ms. Budesheim answered yes.

Mr. Sirb made a motion to deny the application. Ms. Cate seconded the motion. Mr. Freeburn called for discussion on the motion. Mr. Freeburn stated the Board has a duty to follow the law. Sometimes those decisions are not popular and sometimes it is not in accordance with what the residents wish. It is the duty as members of the Zoning Hearing Board to follow the law. Everybody has a right and the freedom and liberty to use their property as they wish unless there is some regulation that says otherwise. He would want to interpret the regulations narrowly in favor of liberty and freedom for people to use their property as they wish, even if it is unpopular. He noted it is his sense that the applicant has met the requirements for special exception. The only objection he has heard is that it is a business in a residential neighborhood. That doesn't make any sense. The fact is that a business in a residential neighborhood is not grounds to deny an application. With regard to security issues, he noted he would be more worried about those that are not getting counseling than those that are. Mr. Freeburn noted that the parking issues will be resolved and she will not be able to do anything that is not already permitted. He noted he will vote against the motion, and that the motion is for the right reasons, but is more to satisfy the neighbors than to satisfy the ordinance. Mr. Sirb stated the ordinance states that they must meet each criterion. Mr. Sirb stated he does not think by the letter of the law that they have met the criteria. It has nothing to do with the neighbors, and the exception should not be granted. Mr. Dowling stated that his vote is based upon whether or not the criteria has been met and whether or not the arguments against are valid contrary arguments.

A role call vote followed: Mr. Fisher-No; Mr. Dowling-Aye; Mr. Sirb-Aye; Ms. Cate-Aye; and Mr. Freeburn-No.

The application was denied.

The hearing ended at 8:05 pm.

Respectfully Submitted,



Michelle Hiner
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON
: TOWNSHIP ZONING HEARING BOARD
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA
:
BETH BUDESHEIM : DOCKET NO. SE 12-01

DECISION DENYING SPECIAL EXCEPTION

The applicant seeks a special exception to conduct a major home occupation in the R-1 zoning district. A hearing on the application was held on April 26, 2012.

Facts

1. The applicant and owner of the property in question is Beth Budesheim of 2020 Holly Street, Harrisburg, Pennsylvania 17104. The applicant was represented at the hearing by Michael Pykosh, Esquire.

2. The property in question is owned by Michael Carew of 1161 Fairmont Drive, Harrisburg, Pennsylvania.

3. The property in question consists of a single family residence located on the east side of Fairmont Drive. The parcel is zoned Residential, R-1 and is improved with a single family residence known as 1161 Fairmont Drive, Lower Paxton Township.

4. The applicant proposes to establish an office for private counseling within the existing residence. Approximately 390 square feet would be set aside for this purpose with a separate entrance while the remaining portion would be used as the applicant's residence.

5. The applicant's profession would require no deliveries, special equipment or hazardous materials. Approximate hours of operation would be noon to 8:00 or 9:00 p.m. Generally patients are seen one at a time. The applicant does not see individuals who are involved in the criminal justice system or sex offenders.

6. In addition to the applicant, a number of neighboring property owners appeared to testify before the Board. Concerns were expressed about the adequacy of parking and the traffic which would be generated by the business. The neighbors felt that the proposed home occupation was not compatible within the residential character of the neighborhood.

7. Notice of the hearing was posted and advertisement made as required by the ordinance.

Conclusions

1. The proposed use of the property would constitute a major occupation under the terms of the zoning ordinance which requires a special exception from the Zoning Hearing Board.

2. Section 403(a)(16) empowers the Zoning Hearing Board to deny or limit a major home occupation where it is determined that the proposed use would be too intense for the property. Further, Section 116 outlines the factors to be considered in granting a special exception.

3. The Board finds that the applicant has failed to meet its burden to conduct a major home occupation. The ordinance requires that the applicant demonstrate property site layout, parking and other elements of proper design. The applicant's plans do not demonstrate clearly that the site can accommodate sufficient parking for the business or that vehicles could safely turn around before exiting the property. Further, the applicant must demonstrate that traffic from the proposed use can be accommodated safely and efficiently. The neighbors testified that traffic on the street is heavy and fast moving for a residential area. Valid concerns were expressed about traffic entering and leaving the property.


4. Granting the special exception could substantially alter the character of the surrounding residential area. The steady flow of patients would disrupt the area's residential character.

Decision

In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the request for special exception to conduct a major home occupation should be and is hereby denied.

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

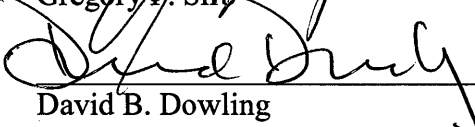
Date: 5/24/2012



Sarah Jane Cate



Gregory P. Siro



David B. Dowling

Board members Fisher and Freeburn dissent from the decision of the Board.